

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

GEORGE FISCHER,

Plaintiff,

vs.

THE KROGER CO.

d/b/a Delight Products Co.,

Defendant.

Civil Action No. 1:21-cv-153

Judge:

DEFENDANT'S NOTICE OF REMOVAL

Now comes Defendant, The Kroger Co. ("Defendant"), and through counsel hereby removes this action pending in the Hamilton County, Ohio Court of Common Pleas to the United States District Court for the Southern District of Ohio, Western Division pursuant to 28 U.S.C. §§ 1331, 1441, and 1446. In support of its notice, Defendant states as follows:

Background and Timeliness for Removal

1. Plaintiff filed his initial Complaint in the Hamilton County Court of Common Pleas, case number A 2100394. All process, pleadings, and orders served in the state proceeding have been filed with this Notice as Composite Exhibit A in accordance with 28 U.S.C. §1446.
2. Defendant was served with the Complaint on February 5, 2021 and this Notice is timely filed within 30 days as required under 28 U.S.C. §1446. No further proceedings have been

held herein, nor have any other pleadings or papers been filed other than those attached hereto as Composite Exhibit A.

Federal Question and Supplemental Jurisdiction

3. Per his Complaint, Plaintiff has alleged causes of action under Ohio law (O.R.C. §4112 *et seq.*), Ohio common law, and federal law (Family and Medical Leave Act, 29 U.S.C. §2601 *et seq.*). [Exh. A, Complaint at 7-13, Counts I-VII].
4. All of Plaintiff's claims relate to his employment with Defendant and allegations of disparate treatment regarding the same. Namely, Plaintiff's claims each relate to his employment with Defendant, and each count alleges that Plaintiff's termination was in violation of state or federal law.
5. This Court has original jurisdiction over Plaintiff's Family and Medical Leave Act ("FMLA") claims pursuant to 28 U.S.C. § 1331. [Exh. A, Complaint at 9-10, Count IV].
6. Plaintiff's state-based claims rely on the same facts and legal conclusions as those claims brought under federal law. [Exh. A, Complaint]. As such, the state-based claims are related to claims in the action within the Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. See 28 U.S.C. §1367.
7. Pursuant to 28 U.S.C. §1367, this Court has the discretion to exercise supplemental jurisdiction over Plaintiff's state-based claims which have been asserted as part of the underlying action. [Exh. A, Complaint at 7-13, Counts I-III and V-VII].
8. Based on the foregoing, removal is proper under 28 U.S.C. §§ 1331, 1367 and 1441(a).

All Procedural Requirements for Removal Have Been Met

9. Based on the above, this is a civil action of which this Court has original and supplemental jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367 and is one that may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. § 1441(a), in that it appears from the Complaint and otherwise that this is an action arising under the laws of the United States and the state-based claims form part of the same case or controversy.
10. The Court of Common Pleas for Hamilton County, Ohio, is located within the Western Division of the Southern District of Ohio. Therefore, venue is proper for this removal because the action is being removed to the district court of the United States for the “district and division embracing the place where such action is pending,” as required by 28 U.S.C. § 1441(a).
11. All Defendants that have been properly joined and served in the underlying State action have joined in the filing of this notice pursuant to 28 U.S.C. § 1446 (b)(2)(A).
12. Defendant will give written notice of the filing of this Notice of Removal to all adverse parties as required by 28 U.S.C. § 1446(d) and will file a copy of this Notice of Removal with the Court of Common Pleas for Hamilton County, Ohio as required by that Section, a copy of such notice has been included in Composite Exhibit A.
13. By filing this Notice of Removal, Defendant does not waive and expressly reserves rights, claims, and defenses, including without limitation all defenses relating to jurisdiction, venue, service of process, and personal jurisdiction.

Accordingly, Defendant requests that the above described action now pending against it in the Court of Common Pleas for Hamilton County, Ohio be removed to this Court.

Dated: March 5, 2021

Respectfully Submitted,

/s/ Jonathan Kelly

Faith Whittaker (OH 82486)

Jon Kelly (OH 95738)

Dinsmore and Shohl, LLP

255 E 5th St #1900

Cincinnati, OH 45202

T: (513) 977-8200

F: (513) 977-8141

E: faith.whittaker@dinsmore.com

Jon.kelly@dinsmore.com

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on March 5, 2021 I electronically filed the foregoing with the Clerk of Court using the ECF system and mailed the same by certified mail to the following:

Matthew G. Bruce
Evan McFarland
The Spitz Law Firm
11260 Chester Road, Suite 825
Cincinnati, OH 45246
Matthew.Bruce@spitzlawfirm.com
Evan.Mcfarland@spitzlawfirm.com

/s/ Jonathan Kelly

Jonathan Kelly